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Representing the United States

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

ERIC J. PARKER

Defendant:

2:16-CR-00046-GMN-PAL

GOVERNMENT'S SENTENCING MEMORANDUM



I heard the words, "**I've got a clear shot at four of them**," and to my right found one of the men pointing his weapon in the direction of the BLM. For me, time had stopped.

- Jim Urquhart, Reuters Photographer (Exhibit A)

1 **I. Summary of Argument**

2 Through words, images and sworn testimony, Eric Parker has demonstrated
3 again and again that on April 12, 2014, he was willing, prepared and determined to
4 kill police officers. Staking a position on a bridge above them, through force and
5 violence he obstructed these officers, threatening their lives, because they had, in his
6 view, the audacity to perform their duties and enforce federal court orders.

7 Eric Parker pled guilty to obstruction of court order, a misdemeanor. Relevant
8 conduct during the events of April 2014 through the present reflect how serious his
9 actions were and how little he takes responsibility for them to this day. Parker is an
10 unrepentant danger – to law enforcement and to the community at large.

11 The government recommends that he be sentenced to five years of supervised
12 probation. This sentence is supported by each of the factors provided in Title 18,
13 United States Code, Section 3553(a), the United States Sentencing Guidelines, and
14 the parties' plea agreement.

15 **II. Procedural Background**

16 On March 2, 2016, a grand jury in this district returned a superseding
17 criminal indictment against defendant Parker and eighteen others in relation to the
18 criminal events that occurred between April 6 and 12, 2014. On March 3, 2016,
19 Parker was arrested in Idaho pursuant to that indictment and detained pending trial.

20 On February 6, 2017, jury trial commenced against Parker and five other co-
21 defendants. Parker testified in this trial. The jury failed to reach a verdict as to
22 Parker and the Court declared a mistrial. On July 10, 2017, the retrial commenced.
23

1 Parker again took the stand to testify. However, in violation of this Court's order and
2 multiple admonitions, he continuously raised topics before the jury for the express
3 purpose of nullification until his testimony was stricken and he was removed from
4 the stand. On August 22, 2017, the jury acquitted Parker of most of the charges
5 against him except the assault on a federal officer and threats to federal law
6 enforcement officers and the corresponding 924(c) counts. Following declaration of
7 mistrial on these counts, the Court released Parker from custody.

8 On October 23, 2017, defendant Parker pleaded guilty to a Superseding
9 Criminal Information charging him with one count of Obstruction of Court Order in
10 violation of 18 U.S.C. §§ 1509 and 2, a Class A misdemeanor, for his conduct on April
11 12, 2014. Pursuant to the plea agreement, the parties each agreed to argue for a
12 sentence of probation, Parker seeking no less than one year and the government
13 seeking up to five years probation.

14

III. Points and Authorities

15

A. Facts

17 The facts of this case are well-known to the Court and recounted here only in
18 summary form. Evidence adduced at trial showed that between April 8 and 11,
19 2014, Parker had reviewed articles and videos, including Pete Santilli's video
20 regarding the April 9 Ammon Bundy tasing and Payne's call to arms video.
21 Thereafter, Parker advocated for people to stand with Cliven Bundy against the
22 BLM. The evidence, including his own statements, showed that Parker and co-
23 defendants Scott Drexler and Steven Stewart left Idaho on April 11 and drove 10
24

1 hours straight through to Bundy Ranch, bringing with them assault rifles,
2 handguns, and ammunition. Parker also stated that he took more weapons with
3 him than usual.

4 Evidence showed that Parker arrived at Bundy Ranch in the early morning
5 hours of April 12. One of the Bundys asked if they wanted to camp in the "militia"
6 camp or with the protestors. Parker chose to be a gunman and picked the "militia"
7 camp. Parker, Drexler, and Stewart then went on patrol for two hours.

8 On April 12, Parker provided security for the Bundys at their staging area.
9 Evidence admitted at trial included photographs and videos showing him standing
10 at the perimeter of the staging area without his tactical vest or rifle. Evidence also
11 showed that after the Sheriff and Cliven spoke to the crowd, Parker followed
12 Bundy's order to get his cattle, updating his Facebook page at 11:24 as follows:
13 "Bundy gave the sheriff 1 hour to disarm the BLM . . . he did not reply. We are now
14 going to free the cattle by any means. The sheriff claimed that the blm is standing
15 down but offered no proof this is when Mr. Bundy gave him the 'do it or else.' We
16 will not be lied to."

17 Parker was captured in photo and video footage moving from the area used
18 by the Bundy followers as a parking lot across from the ICP to the bridge
19 overlooking the officers in the wash. By the time he got to the ICP, Parker had
20 donned his tactical vest and was armed with an assault rifle. Parker was well
21 documented standing, walking and kneeling on the bridge all with his rifle in the
22 low ready position, and of course photo after photo showed him prone behind the
23

1 concrete barriers of the highway with his rifle aimed through the gap in the barriers
2 toward the officers. Photos admitted at trial and expert testimony offered during
3 the retrial showed that Parker had placed the firearm in the firing position.
4 Testimonial evidence established that officers saw Parker and Drexler taking these
5 positions and understood from their training and experience that the defendants'
6 presented an imminent threat owing to their superior firing position and their
7 apparent intention to assault the officers. More than anyone else, Parker, with his
8 distinctive black trucker hat, was spotted by the officers making tactical
9 movements, protecting himself, and placing the officers lives and the lives of the
10 unarmed women and children positioned in front of Parker in danger.

11 And evidence at trial showed Parker's immediate state of mind on the bridge
12 on April 12 in the form of a video interview by an independent reporter. Parker
13 stated that people needed to "keep matching force for force" and that he believed it
14 was good that children had been down in the Wash because that may have been the
15 only thing that kept the crowd from getting gassed. He enthusiastically
16 acknowledged that things could have gotten violent and that people could have
17 gotten hurt. He encouraged others to go to Texas and do the same thing and show
18 force to BLM there as well.

19 As the evidence showed at trial, Parker continued in the months and years
20 after April 12, 2014, to celebrate his conduct that day, contrasting his achievements
21 for the "movement" with those of Timothy McVeigh, using the image of him prone
22 on the I-15 on t-shirts with the word "resist," among many other posts. Evidence
23

1 also showed Parker participating in military-style operations after April 12 on
2 public lands designed to keep public lands officers from doing their jobs –
3 specifically at the Sugar Pine Mine in Oregon and Operation Big Sky in Montana.

4 Evidence also established that Parker knew that the BLM was in the area
5 enforcing federal court orders, that on April 12, 2014, he heard the BLM officer's
6 announcements that the area was closed pursuant to those court orders, heard the
7 officer directing the crowd to leave and that he remained on the bridge, nonetheless.

8 **B. Legal Standard**

9 Proper sentencing procedure requires that, before imposing sentence, the
10 district court: (1) correctly calculate the Sentencing Guidelines range; (2) treat the
11 Guidelines as advisory; (3) consider the 18 U.S.C. § 3553(a) factors; (4) choose a
12 sentence that is not based on clearly erroneous facts; (5) adequately explain the
13 sentence; and, (6) not presume that the Guidelines range is reasonable. *United*
14 *States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008). This is true for a Class A
15 misdemeanor conviction as well. See U.S.S.G. § 1B1.9. When the court imposes a
16 sentence within the Guidelines range, “it is probable that the sentence is
17 reasonable” because the court’s application of the § 3553(a) factors accords with the
18 Sentencing Commission’s independent application of those factors in the “mine run
19 of cases.” *United States v. Blinkinsop*, 606 F.3d 1110, 1116 (9th Cir. 2010) (quoting
20 *Rita v. United States*, 551 U.S. 338, 351 (2007)).

22 It would constitute procedural error, however, for the court to “attach [] a
23 presumption of reasonableness to the Guidelines range or weight[] the Guidelines
24

range more heavily than other § 3553(a) factors.” *Carty*, 520 F.3d at 994. The “Guidelines should be the starting point and the initial benchmark,” but the sentencing court must also consider the § 3553(a) factors “in determining the appropriate sentence.” *Nelson v. United States*, 550 U.S. 350, 352 (2009).

C. Argument.

i. The PSR’s Offense Level Computation is Correct.

The PSR correctly calculated the offense level for the Obstruction of Court Order base offense level as 14 and correctly applies a 3-level enhancement for official victim for a total of 17. The PSR is further correct that the defendant may be sentenced to up to five years of probation pursuant to 18 U.S.C. § 3561(c)(2).

ii. A Sentence of Five Years of Probation is Appropriate.

The PSR recommends a sentence of time served because it finds that the guideline range falls in a zone on the Sentencing Table that does not allow for probation. PSR ¶ 124. However, the Guidelines in no way prohibit the Court from imposing a sentence of probation. *See U.S.S.G. § 5b1.1(b)* (providing for three conditions which preclude a sentence of probation under the Guidelines, none of which are present here). When the Court does not impose a sentence of imprisonment, the Court may properly impose a sentence of probation, regardless of the offense level under the Guidelines. The plea agreement expressly states the parties’ agreement for a sentence of probation.¹ Section 3553(a) requires the Court

¹ Moreover, following the recommendation in the PSR to impose a sentence of time served would likely result in an illegal sentence. *See United States v. Nichols*, No. 17-5580, 2018 WL 3614574 (6th Cir. July 30, 2018) (holding district court’s corrected

1 to impose a sentence “sufficient but not greater than necessary to comply” with the
2 factors articulated in subparagraph 2. 18 U.S.C. § 3553(a). The government
3 submits that the overall nature of the offense and the characteristics of the offender,
4 when combined with the circumstances under which the offense was committed,
5 justify a sentence of five years of probation for defendant Parker.

6 **a. The Nature and Circumstances of the Offense and
7 the Need for the Sentence to Reflect the
8 Seriousness of the Offense.**

9 The recommended Guideline sentence is reasonable when considering the
10 seriousness of the relevant conduct at issue. Parker committed multiple crimes of
11 violence in concert with Cliven Bundy and his followers in order to threaten and
12 coerce federal law enforcement officers from carrying out their lawful duties. In so
13 doing, he showed no respect for the law, for the rule of law, for law enforcement
14 officers, for court orders, or for the community. He was prepared and willing to kill
15 law enforcement officers simply because they were enforcing court orders against
16 Bundy.

17 These officers did nothing more than provide security for civilians tasked
18 with rounding up these cattle. They took the reasonable measures that law
19 enforcement officers across this country undertake in any operation covering an

20
21 sentence of “time served” where defendant had served twelve years but the statutory
22 maximum was ten years was unlawful). *See also United States v. Peters*, 470 F.3d
23 907 (9th Cir. 2006) (holding that the court lacked authority to grant credit of nine
24 days of time served in imposing four month sentence because district court may not
compute credit for time served, but rather “the prerogative to grant credits in the first
instance rests with the Attorney General, acting through the Bureau of Prisons.”) *Id.*
at 909.

1 area and operation of this scale. Bundy and Parker thought the BLM used too many
2 officers to do so, so they thought it best to go about and threaten their lives by
3 shooting them.

4 These officers were sought out and provoked by Bundy and his supporters
5 throughout the days leading to the April 12 assault. Among other things, the
6 Bundys went so far as to ram an ATV into a dump truck in order to bring the
7 impoundment to a halt on April 9, threatened to shut down a business owner who
8 freely entered into a contract with the BLM to sell trespass cattle, and put out a
9 nationwide call for militia to come to Bundy ranch to confront the BLM. Parker
10 answered that call and arrived at Bundy Ranch on April 12, gathering with other
11 supporters at staging area near Bundy's home.

12 When Parker arrived he did not find federal law enforcement officers
13 anywhere in this area – indeed there was no federal law enforcement officer located
14 within five miles of Parker or the staging area. No snipers were aiming at him, as
15 he falsely quailed to his Followers. No officers were “abusing him.” Parker saw
16 nothing but the Bundys, their supporters, including the many militia members, and
17 Sheriff Gillespie, who stood on the stage and told Bundy, Parker and hundreds of
18 Bundy supporters and militia, that the BLM was leaving the area and the
19 impoundment operation was over. But Parker did not then and there turn around
20 and go home peacefully. Rather, when Cliven Bundy later told the crowd to get his
21 cattle, Parker followed, and traveled in a stranger’s vehicle five miles to the BLM
22 compound, knowing he would confront the BLM officers there. He went to the
23

1 officers – negating any claim of provocation or self-defense – took a lethally
2 advantageous position over the officers in the wash and then threatened them with
3 an assault rifle in his hands.

4 And if that was not enough, Parker continued to threaten law enforcement
5 and glorify his lawlessness up to the time of the Superseding Indictment in this
6 case. Like Bundy, Parker became a law unto himself and he was determined to use
7 force and threats of force to enforce his view of the law.

8 Parker’s violent conduct greatly affected the victims in this case. During
9 trial, the Court heard from 15 federal officers, who all testified about their fear on
10 April 12, 2014, and many of whom testified to experiencing trauma after the
11 assault. The Court also heard from five local law enforcement officials, including
12 now Sheriff Lombardo, who similarly testified regarding their fear on April 12. In
13 addition, the Court has detailed victim impact statements from four federal officers
14 describing the deep trauma they suffered as a result of the April 12, assault. *See*
15 PSR at ¶¶ 65, 66. For most of the officers in and around the wash on April 12, Eric
16 Parker is the face and embodiment of the deadly threat leveled against them. It is
17 Eric Parker, bobbing up and down on the I-15 with a rifle that officers remember
18 with vivid clarity. Eric Parker, who the next day many of them realized for the first
19 time, had taken the most perfect and deadly position, laid out, fully protected
20 behind concrete barriers, where he could aim, shoot and kill them with no ability
21 on the officers’ part to return fire.

1 **b. Parker's History and Characteristics.**

2 Parker's actions on April 12, 2014, reflect his commitment to using force in
 3 opposition to law enforcement whenever *he* deems their actions unlawful. The events
 4 of April 12 made Parker a hero for others who share this venal mindset. Parker
 5 embraced that role. Since April 12, 2014, Parker has continuously referenced Bundy
 6 Ranch on his Facebook page and routinely changes his profile picture to pictures of
 7 himself brandishing and pointing his assault rifle at law enforcement on April 12,
 8 2014, including one with the words "BE THIS GUY" superimposed on it:

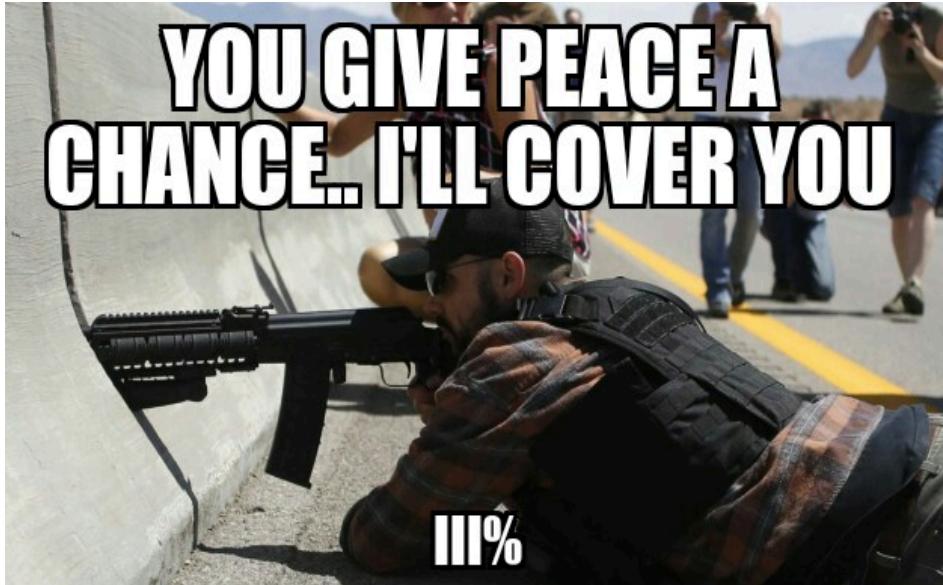


16 On April 11, 2015, Parker posted the following on Facebook in reference
 17 to Bundy Ranch:

18 About one year ago, We woke up in the desert and made bacon bagel
 19 sandwich's for breakfast after arriving at about 2am we took watch on
 20 the gate from 2 till 4am our only interaction with the Militia was that
 21 morning at the HQ tent we were told we would escort the Bundies to the
 22 stage and keep an eye on the crowd

23 After that the real patriots went and go the cows back while others
 24 stayed at the safety of the stage.

On June 11, 2015, Parker posted this picture:



On February 2, 2016, Parker posted this picture celebrating the assault and extortion of April 12, 2014:



Following his violent conduct at Bundy Ranch, PARKER became one of the founders of the Idaho III%. The III% motto is "When Tyranny Becomes Law, Rebellion Becomes Duty!"²³

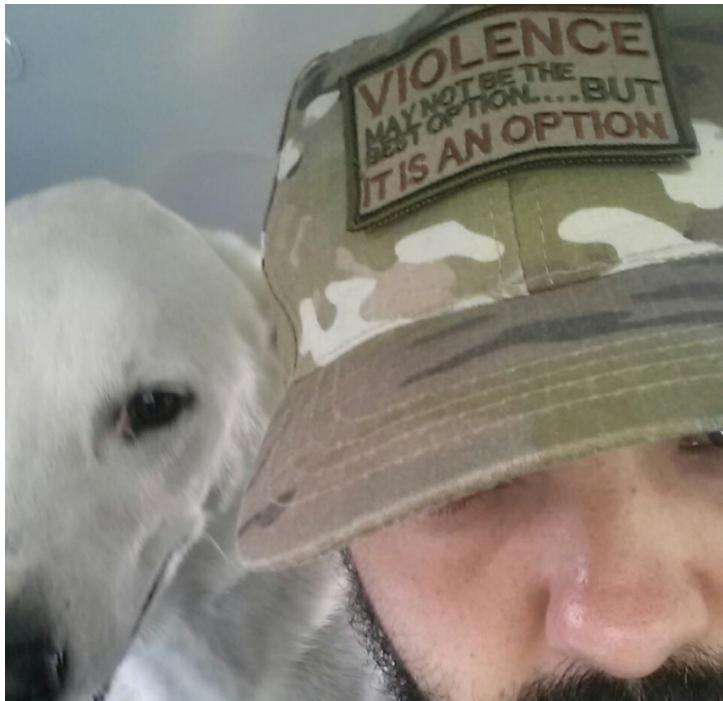
1 In April 2015, a year after the assault and extortion at Bundy Ranch, a dispute
2 arose between the BLM and miners in Grants Pass, Oregon at the Sugar Pine Mine.
3 The miners requested outside assistance, to which Idaho III% and various Bundy
4 Ranch veterans, including Parker responded, hoping for another Bundy Ranch. The
5 government avoided the miners and armed occupants to prevent the creation of
6 another Bundy Ranch.

7 In August 2015, Parker participated in what he and others referred to as
8 “Operation Big Sky,” which was an event where III% members and others traveled to
9 Lincoln, Montana, with firearms to intimidate the U.S. Forest Service (USFS) to
10 cease regulation of White Hope Mine, a small mining operation. At the miner’s
11 request, Parker and others traveled to Lincoln and established an armed checkpoint
12 on public land leading to the mine. They also maintained a military style security
13 operation at the mine site and served a “Notice of No Trespass” on USFS, threatening
14 to arrest USFS employees and contractors if they set foot on the public land upon
15 which the site sits. They claimed that “the immediate aim of this operation is to act
16 as a buffer between the miners and any unlawful action by the USFS.”



23 Defendants Parker, Drexler and Cooper at Operation Big Sky
24

1 Parker has also made numerous statements advocating use of force and
2 violence against law enforcement. On July 11, 2015, Parker posted the following
3 picture on Facebook:



14 Perhaps the most chilling, are Parker's statements contrasting his
15 achievements "within the movement" with those of Timothy McVeigh, stating:
16 "McVeigh didn't accomplish shit . . . The only thing he accomplished was getting
17 himself executed and attaching a stigma to the movement for a decade. Now what
18 did I accomplish in the past two and a half years." Retrial Exhibit 102. Parker
19 went on in that lengthy Facebook post to discuss how he and his friends had begun
20 to train and prepare for an opportunity a year and a half before the events with the
21 Bundys, he listed his participation in the stand-off, joining Idaho 3%, and Sugar
22 Pine Mine. Parker noted that his group networks, recruits and trains for such
23 encounters.
24

1 And what do they train for/ In a Facebook post dated September 24, 2015,
2 Parker was asked “What if one/is agrees with 3%ers but works for BLM/USFS?”
3 Parker responded in part, “I reach out to as many of the LE branches that I can
4 especially in my local area shake their hand look them in the eye let him know I
5 don’t want to kill him and I don’t want him to kill me hopefully it’ll never have to
6 get to the point it did in Nevada ever again. . . .Short answer is I wish they would
7 just find another job”.

8 It is clear, then, for Eric Parker, that confronting these federal law
9 enforcement officers was not a one-off experience on April 12, 2014. It is a
10 movement – a way of life that involves preparing, recruiting and training with
11 firearms for an event where he is prepared and willing to kill an officer if he
12 determines it is necessary.

13 **c. The Need for the Sentence to Promote Respect for the
14 Law, to Afford Adequate Deterrence and Just Punishment
15 and to Protect the Public.**

16 The recommended sentence will promote respect for the law and afford an
17 adequate deterrence to others. Parker has been very public in flaunting his
18 disrespect for the law and has long affiliated with the so-called Militia and Patriot
19 Movements, which ascribe to the belief that the federal government is an enemy of
20 the constitution that must be dealt with by force. Parker has confirmed this belief
21 system by his actions and words.

22 General deterrence is one of the prescribed goals of every sentencing. 18
23 U.S.C. § 3553(a)(2)(B); *see also United States v. Onuoha*, 820 F.3d 1049, 1055 (9th
24 Cir. 2016 (noting that the government has “an interest in gaining a trial conviction

1 to show others that such conduct will result predictably in conviction and a serious
2 penalty of incarceration"); *United States v. Dyer*, 216 F.3d 568, 570 (7th Cir. 2000)
3 (noting one principal objective of criminal punishment is deterrence). General
4 deterrence is a significant factor in the present case. Further, general deterrence
5 depends upon the public seeing some consequence for criminal conduct - not only
6 among potential wrongdoers who may be deterred from committing crimes, but also
7 among law-abiding citizens who need assurance that the criminal justice system
8 will do its utmost to protect law enforcement from harm.

9 Parker's conviction is grounded not only in violence and lawless acts, but also
10 in his complete disregard for the rule of law. Parker came to Bunkerville for the
11 express purpose of engaging federal law enforcement officers and brought weapons
12 and ammunition with him.

13 The inescapable corollary, especially in light of his subsequent statements
14 and actions, is that Parker will do it again – whether by himself and/or by inciting
15 and encouraging others to act. His rhetoric and his conduct relating to these charges
16 make clear that he has not changed his mind about the federal government, federal
17 law enforcement authorities, or the law. As demonstrated above, Parker has
18 essentially declared a personal war against the federal government. No evidence
19 was adduced during this massive investigation, or during the lengthy trials, to
20 suggest that Parker has changed his mind about any of his actions on April 12 or
21 about his willingness to repeat them.

Accordingly, the best way to deter Parker from engaging in future criminal conduct and to protect the public, including law enforcement officers, from such actions, is to place him on probation for five years. Parker placed numerous law enforcement and federal officials' lives in jeopardy by his armed participation in the violent confrontation orchestrated by Bundy. A period of five years probation is, therefore, reasonable under the circumstances of his misdemeanor plea.

IV. Conclusion

WHEREFORE, for all the foregoing reasons, the Court should impose a sentence of five years probation.

DATED this 2nd day of August, 2018.

Respectfully,

DAYLE ELIESON
United States Attorney

/s/ Nadia Ahmed

STEVEN W. MYHRE
NADIA J. AHMED
DANIEL SCHIESS
Assistant United States Attorneys

Attorneys for the United States

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the United States Attorney's Office. A copy
3 of the foregoing **GOVERNMENT'S SENTENCING MEMORANDUM** was served
4 upon counsel of record, via Electronic Case Filing (ECF).

5 **DATED** this 2nd day of August, 2018.

6
7 */s/ Nadia Ahmed*

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NADIA AHMED
9 Assistant United State Attorney

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